

Answers To Questions From Employers About W-4's/DE4's

This list of frequently asked questions and answers about income tax withholding has been prepared to help employers understand how to use the W-4 (IRS) and DE4 (California) forms to determine income tax withholding rates. If you have other questions about withholding, you may call or write your local Employment Development Department or IRS office.

Am I required to withhold state income tax?

Yes, you are required to withhold state income tax on "wages" of California residents and nonresidents for services performed in California.
(UIC 13020 and R&TC 18663)

What am I supposed to do with the withholding allowance certificate (W-4 for IRS and DE4 for California)?

- Use the certificate submitted by the employee to determine how much income tax to withhold.
(UIC 1340(a))
- Send to the IRS on a quarterly basis, copies of certificates claiming 11 or more allowances, or claiming exempt if wages are expected to exceed \$200 a week.
(IRS Regulation 31.3402(f)(2)-1(g) and UIC Regulations 4340-1(b))
- Send to the Employment Development Department, on a quarterly basis, only those certificates where the employee is claiming different exemptions for state purposes than for federal purposes but exemptions for state purposes exceed 10 or show "exempt."
(UIC 13040, and UIC Reg. 4340-1(c))

To what extent am I liable for withholding state taxes from an employee's wages?

You could be held liable for the amount that should have been withheld if you do not withhold at the prescribed rate. (If a state or federal determination has been given to you, follow those instructions.) You are not liable to the employee for the amount you withhold.
(UIC 13070 and 13074)

Must I send a copy of the certificate to the Franchise Tax Board upon their request?

Yes. The Franchise Tax Board can, in writing, require you to send a copy of the certificate.
(UIC Reg. 4340-1(e) and R&TC 18667)

May I withhold for all employees at same rate?

No. You must withhold at the rate appropriate for each employee, based on their withholding allowance certificate. (UIC 13020)

What should I do if an employee fails or refuses to file a withholding allowance certificate?

Withhold as if the employee were single with 0 allowances.
(IRS Reg. 31.3402(f)(2)-1(a), UIC 13040(A) and 13041)

If an employee files a certificate showing "Exempt," can I withhold as single with 0 allowances just to be on the safe side?

No. Exempt status may be appropriate.
(IRC 3402(n) and UIC 13026)

When does a certificate showing exempt status expire?

February 15 of the next year.
(IRS Reg. 31.3402(f)(4)-2(c)(1))

What must I do if I am notified by the IRS to withhold at a different rate than the employee showed on the certificate submitted?

Withhold for federal and state purposes at the rate determined by the IRS until they withdraw or modify their determination.
(IRS Reg. 31.3402(f)(2)-1(g)(5)(vi and vii) and UIC Reg. 4340-1(b))

What must I do if am notified by the Franchise Tax Board to withhold at a different rate than the employee showed on the certificate submitted or as determined by the IRS?

For state purposes, withhold at the rate determined by the Franchise Tax Board until the Board modifies or withdraws its determination. (R&TC 18667)

May I destroy the determination notice received from the IRS or the Franchise Tax Board if the employee terminates?

Not if you anticipate rehiring the employee. The determination is valid until the IRS or Franchise Tax Board modifies or withdraws it.
IRS Reg. 31.3402(f)(2)-1(g)(5)(vi and vii),
UIC Reg. 4340-1(b) and R&TC 18667

UIC = Unemployment Insurance Code
R&TC = Revenue and Taxation Code



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